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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(**HONORABLE LARRY A. BURNS**)

UNITED STATES OF AMERICA, Plaintiff, v. **GENARO SMITH-BALTIHER**, Defendant.	CASE NO. 07CR3161-LAB DATE: June 10, 2008 TIME: 9:00 a.m. PROPOSED LIMITING INSTRUCTION REGARDING ADMISSION OF ORDER OF IMMIGRATION JUDGE AND WARRANT OF REMOVAL

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, AND
PAUL STARITA, ASSISTANT UNITED STATES ATTORNEY.

Mr. Smith-Baltiher, by and through his counsel, Joseph M. McMullen, and Federal Defenders of San Diego, Inc., pursuant to Federal Rule of Evidence 105, requests that the Court provide the jury with the following limiting instruction should the Government seek to admit the Order of Removal of the Immigration Judge and the Warrant of Removal, as anticipated.

Respectfully submitted,

Dated: June 10, 2008

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JOSEPH McMULLEN
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Smith

DEFENDANT'S PROPOSED LIMITING INSTRUCTION REGARDING DEPORTATION DOCUMENTS

The government has offered evidence that Mr. Smith was removed or deported from the United States by order of an Immigration Judge. These documents do not conclusively establish that Mr. Smith is an alien.

Authority:

> "**Clearly it would be improper for the government to rely on factual findings from a deportation hearing to prove an element of the crime of illegal reentry, as the burden of proof in a criminal proceeding requires a greater showing by the government than in an administrative hearing.** The use of a deportation order to prove the element of alienage would allow the government to skirt around the more stringent requirements of a criminal proceeding by relying on that factual finding from the INS proceeding. To put it more simply, the government would demonstrate that Medina is an alien by showing that the INS found that he was an alien." United States v. Medina, 236 F.3d 1028, 1030-31 (9th Cir. 2001) (emphasis added).

CERTIFICATE OF SERVICE

Counsel for Defendant certifies that the foregoing is true and accurate to the best information and belief, and that a copy of the foregoing document has been caused to be delivered this day upon:

Courtesy Copy to Chambers

Copy to Assistant U.S. Attorney via ECF NEF

Copy to Defendant

Dated: June 10, 2008

/s/ Joseph M. McMullen

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